Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45 (DA 00-1882)
Western Wireless Corporation Petition to Reject Rural Telephone Company Self-Certification Filed By Valor Telecommunications Southwest, LLC	)	

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COMMENTS OF INDEPENDENT TELEPHONE &
TELECOMMUNICATIONS ALLIANCE

The Independent Telephone & Telecommunications Alliance ("ITTA") submits these comments in support of the self-certification by Valor Telecommunications Southwest, LLC ("Valor") of its status as a rural telephone company ("RTC") under Section 3(37)(D) of the Communications Act of 1934, as amended (the "Act").[1] ITTA urges the Commission to reject the call by Western Wireless Corporation ("Western Wireless") to limit inappropriately the special status Congress provided to RTCs under the Act. Transactions by RTCs to acquire rural exchanges, such as Valor's acquisitions of the exchanges at issue here, provide substantial benefits to the customers of the exchanges involved and should not be discouraged by an erroneous and unnecessarily restrictive interpretation of the Act. Moreover, contrary to Western Wireless's doomsday scenario, validating Valor's RTC status will not materially impair the ability of other telecommunications carriers to obtain or maintain eligible telecommunications

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1 47 U.S.C. § 153(37).

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carrier ("ETC") status under Section 214(e).[2] The Commission should reject Western Wireless's petition and affirm Valor's status as an RTC entitled to all of the protections provided to ETCs under the Act.

I. ITTA AND ITS MIDSIZE TELEPHONE COMPANY MEMBERS' ROLE IN LARGE CARRIERS' DIVESTITURE OF RURAL PROPERTIES

ITTA is an organization of midsize incumbent LECs each serving less than two percent of the nation's access lines. ITTA members collectively serve over six million access lines in 40 states and offer a diversified range of services to their customers. ITTA's smallest member company serves just under 100,000 access lines, while its largest serves just over two million.

Many ITTA members qualify as RTCs. Although smaller in size than the Regional Bell Operating Companies, ITTA's members, such as Valor, are aggressively pursuing new opportunities to compete in the modern telecommunications marketplace. Among other initiatives, many ITTA members have made substantial investments to acquire telephone exchanges, transactions which the Commission has recognized as benefiting the public.[3] In fact, ITTA members have been in the forefront of acquiring rural lines from larger carriers. ITTA member companies that enter into these new markets typically increase investment in the local network infrastructure, provide new service offerings, and show greater responsiveness to local rural consumers' needs. In a world dominated by telecommunications giants, ITTA and its members seek regulatory policies from the Commission that will encourage – or at least not discourage – smaller telecommunications companies to pursue these new opportunities and improve service to consumers in rural areas.

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[2] 47 U.S.C. § 214(e).

II. WESTERN WIRELESS'S PETITION SEEKS TO UNDERMINE THE SPECIAL STATUS THAT CONGRESS PROVIDED TO RTCS IN THE ACT AND WOULD DISCOURAGE INVESTMENT OPPORTUNITIES FOR ALL RTCS

Section 214(e)(2) permits a state commission to designate more than one ETC in an area served by an RTC if the state commission determines that such additional designations would serve the public interest.[4] Western Wireless wrongly claims that, if a new RTC were created, Section 214(e)(2) would have a detrimental effect on other ETCs operating in the new RTCs study area.[5] To avoid that result, Western Wireless argues, carriers, such as Valor, that were formed after the passage of the Telecommunications Act of 1996 ("1996 Act"), should not be permitted to self-certify to RTC status under Paragraph D of Section 3(37), or, by implication, under any other paragraph of that section.[6] Western Wireless's interpretation of Section 214(e)(2) is fundamentally flawed, however, as it ignores the express language of the Act and the policies surrounding Congress's decision to afford RTCs special status. Moreover, if taken to its logical conclusion, Western Wireless's argument would dictate that no new rural carrier would ever be certified as an RTC for any exchanges purchased from a non-rural carrier. There is no support for such a result in the Act, and, indeed, such a rule would subvert the pro-competitive intentions of the 1996 Act.

A. WESTERN WIRELESS'S ARGUMENTS WOULD UNDERMINE THE RTC FRAMEWORK

Although styled as a petition to reject Valor's designation as an RTC, the petition essentially seeks a determination that would undermine the special status that Congress provided

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3 *See, e.g.*, *ALLTEL Corporation*, 14 FCC Rcd 14191 (1999); *PacifiCorp Holdings, Inc.*, 13 FCC Rcd 8891 (1997).

4 47 U.S.C. § 214(e)(2).

5 Western Wireless Petition at 8-9.

to all RTCs. Regardless of how much Western Wireless disagrees with Congress's decision to afford RTCs unique status, the Commission should reject Western Wireless's petition as contrary to the plain language and any reasonable interpretation of the Act.

Western Wireless contends that, because Valor is purchasing exchanges from GTE, a "non-RTC,"[7] the exchanges at issue are "disqualified" from RTC status. This "disqualification," however, cannot be supported by any provision of the Act. Congress defined and provided certain protections to "rural telephone companies," not to particular exchanges, to recognize the need for the Commission, and state commissions, to take special care where RTCs are involved. *Exchanges* do not become "disqualified" simply because they were at some point owned by a non-RTC.[8] Rather, Section 3(37) specifies that an RTC is a *carrier* that meets certain prescribed criteria, regardless of the former ownership of its constituent exchanges. Nothing in the Act makes the prior owner of the exchange a determinative factor.

Western Wireless also contends that RTC status should be discouraged because it would require competitive ETCs to serve the RTC's entire study area and because it would require subsequent applicants for ETC status to make a public interest showing.[9] This argument, however, is merely the flip-side of the "disqualification" argument. As discussed above, the statute makes clear that an RTC is entitled to certain statutory protections under Section 214(e), regardless of the ownership status of its exchanges on the date of enactment of the 1996 Act. There is no dispute that Valor currently meets the numerical thresholds necessary to qualify it for

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6 *Id.*

7 *Id.* at 8.

8 In fact, other ITTA members have purchased extensive properties from non-RTCs. All of these properties have maintained their rural status.

9 *Id.* at 9.

RTC status. Valor is accordingly entitled to the statutory protections afforded to RTCs under the Act.

Western Wireless purports to limit its argument to RTCs as defined under Section 3(37)(D).[10] The so-called "substantial[] prejudice[]" that Western Wireless alleges, however, would apply equally to an RTC that qualified under any of the other provisions of Section 3(37). For example, if a newly-created LEC acquired fewer than 50,000 access lines from a non-RTC incumbent, and thus qualified as an RTC under Section 3(37)(B),[11] subsequent applicants for ETC status in the RTC's study area would be required to make a public interest showing and pre-existing ETCs could be required, if the state commission so determined, to serve the new RTC's entire study area. These are the same requirements of which Western Wireless complains in its petition. Thus, the logical implications of Western Wireless's arguments simply cannot be limited to RTCs defined under Section 3(37)(D), but would extend to all RTCs.

Because Western Wireless's petition potentially reaches all RTCs, grant of its petition would have harmful consequences on new RTC investment in telephone exchanges around the country. As evidenced by the numerous study area waivers that the Commission has granted, the Commission has recognized that the acquisition by small and rural carriers of exchanges serving low-density and rural areas serves the public interest.[12] These transactions benefit small and rural carriers and their customers by enabling the service provider to expand,

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10 Section 3(37)(D) defines an RTC to include a carrier that "has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996." 47 U.S.C. § 153(37)(D).

11 Section 3(37)(B) defines an RTC to include a carrier that "provides telephone exchange service, including exchange access, to fewer than 50,000 access lines." 47 U.S.C. § 153(37)(B).

12 *See, e.g., Telephone USA of Wisconsin, LLC*, Order, DA 00-1862, at ¶ 11 (rel. Aug. 16, 2000).

achieve economies of scale and scope, and become more efficient. Denying RTCs the safeguards that Congress intended they receive under Section 214(e) for any exchange acquired from a non-RTC would, aside from violating the express provisions of the Act, serves only to discourage these transactions and could potentially deny consumers the public interest benefits that such transactions entail.

The Commission has long recognized that its policies should not discourage purchases of exchanges by small and midsize carriers when such transactions "offer legitimate advantages to the LECs and customers involved."[13] Here, Western Wireless seeks relief that would undercut that longstanding goal. Just this summer, the Federal-State Joint Board on Universal Service explicitly considered the transfer of interim hold-harmless universal service support from non-rural to rural carriers in the context of acquisitions of exchanges.[14] The Joint Board concluded, after careful deliberation that the interruption of universal service interim hold-harmless funding in connection with a sale of exchanges to rural carriers could undermine universal service.[15] Importantly, the Joint Board never suggested that these exchange would somehow be "disqualified" from the support it explicitly recommended that they be eligible to receive. Accepting Western Wireless's arguments would put the Commission in the position of directly contradicting the Joint Board's determination.

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13 *E.g., Amendment of Part 69 of the Commission's Rules Relating to the Common Line Pool Status of Local Exchange Carriers Involved in Mergers and Acquisitions*, Report and Order, 5 FCC Rcd 231, 233 (1989)

14 *Federal-state Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, FCC 00-J-01 (rel. June 30, 2000), at ¶ 21.

15 *Id.*

B. THE CREATION OF A NEW RTC DOES NOT REQUIRE A STATE COMMISSION TO DETERMINE WHETHER THE PUBLIC INTEREST SUPPORTS THE ETC DESIGNATION OF PRE-EXISTING ETCS

RTC also asserts that the creation of a new RTC would adversely affect the ETC status of pre-existing RTCs. This is incorrect. Section 214(e)(2) provides, in relevant part, that "*Upon request*, and consistent with the public interest, convenience, and necessity, the state may, in the case of an area served by a rural telephone company, . . . designate more than one common carrier" as an ETC.[16] The provision further states that "*[b]efore* designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the state commission shall find that the designation is in the public interest."[17] The emphasized portions of the quoted provisions demonstrate that a state commission is not required to determine that continued ETC status for pre-existing ETCs is in the public interest whenever a new RTC is created. Rather, the state commission makes an ETC designation "upon request" and makes any required public interest findings "before" the ETC designation. Nothing in Section 214(e)(2) contemplates that a state commission would reevaluate its public interest determination *after* the ETC designation is granted simply because a new RTC commences operation. Western Wireless's arguments to the contrary simply cannot be supported by the language of the Act.

The policy arguments also weigh heavily against grant of Western Wireless's petition. The definitions of a rural telephone company and the structure and language of Section 214(e) are essential to Congress's careful balancing of interests to protect universal service while promoting competition. Small or rural carriers frequently serve high costs areas and, at least until universal service reform is complete, can easily be destabilized by the loss of relatively few business customers. Accordingly, in enacting the definition of rural telephone company in

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16 47 U.S.C. § 214(e)(2) (emphasis added).

Section 3(37), Congress recognized that state commissions should take special care when authorizing *new* entrants to compete with ILECs that have particularly small or rural service territories. Among other factors, then, state commissions must take into account the effect on an ILEC RTC when authorizing additional ETCs. These concerns attach, and the safeguards apply, with no less force when applied to carriers that acquire exchanges from large Bell Operating Companies than they do when applied to other carriers.

In contrast, where *pre-existing* ETCs are operating in the new RTCs study area, the RTC purchasing the exchanges has factored into its decision to buy the presence in that market of one or more competitors. In the unlikely event that the purchasing RTC would petition for relief, the state commission would necessarily take into account that (1) the competing ETC has already been designated and is offering a competing basket of all the service supported by the universal service fund; and (2) the purchasing ILEC entered into the transaction with full knowledge of the existence of the competitor. In such a case, it is far from clear that the state commission would be inclined to grant relief, upsetting the settled expectations of the ETC already in the market and its customers, even if Section 214(e) authorized the state commission to do so. Accordingly, Western Wireless's contention on this point also must be rejected.

C. AN RTC'S SERVICE AREA FOR PURPOSES OF SECTION 214(E) DOES NOT AUTOMATICALLY EXPAND TO AREAS SERVED BY THE RTC AS A COMPETITIVE LEC

Western Wireless also suggests that when an RTC enters a new market as a competitive LEC, that new market becomes "an area served by a rural telephone company" under Section 214(e)(2) and, therefore, the ETC status of any other non-rural carrier -- including

17 *Id.* (emphasis added).

the incumbent LEC -- is called into question.[18] If Western Wireless were correct, then a real quandary would be created if *two* RTCs entered a non-rural market as competitive LECs because, under Western Wireless's interpretation of Section 214(e), the state commission would not be able to maintain the ETC status of both RTCs without making a public interest determination.

Of course, that is not how Section 214(e) works. Section 214(e)(5) makes clear that an RTC's "service area" is equivalent to its "study area." A market that the RTC entered as a competitive LEC would not be part of the RTC's study area and, thus, would not be an "area served by a rural telephone company" under Section 214(e)(2). The Commission should reject this argument in short order.

III. CONCLUSION

Western Wireless's petition to reject Valor's self-certification as an RTC is based on an erroneous interpretation of the Act, seeks to deny RTCs the protections that Congress afforded, and would discourage small and rural LECs from making beneficial investments in the acquisition of new exchanges. For these reasons, and the reasons described in these comments, the Commission should deny Western Wireless's petition and affirm Valor's self-certification as an RTC.

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18 Western Wireless Petition at 9.

Respectfully submitted,

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September 18, 2000

CERTIFICATE OF SERVICE

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